

HOUSE BILL 2904

By Jones S

AN ACT to amend Tennessee Code Annotated, Title 8;
Title 36, Chapter 6; Title 36, Chapter 4 and Title
37, relative to guardians ad litem.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-4-132, is amended by deleting the section in its entirety and substituting instead the following:

(a) As used in this section:

(1) "Attorney ad litem" means an attorney, licensed to practice law in the state of Tennessee and in good standing, appointed by the court to advocate for the best interests of a child and to ensure that the child's rights, concerns and preferences are effectively advocated; and

(2) "Guardian ad litem" means any person, including an attorney, appointed by the court to assist the court in making a determination for the parenting and best interests of the child, including child support, allocation of parenting responsibilities and establishment of a residential schedule.

(b) In an action for dissolution of marriage involving a minor child when the parties are unable to agree on a temporary or permanent parenting plan pursuant to the provisions of title 36, chapter 6, part 4 upon its own motion or upon the motion of either party and, if the court finds that it is necessary in order to make a determination for the parenting and best interests of the child, the court may appoint for a child of the marriage either a guardian ad litem or an attorney ad litem, or both, provided that if both a guardian ad litem and an attorney ad litem are appointed, they may not be the same person.

(c)

(1) If the court finds that it is necessary to appoint a guardian ad litem pursuant to subsection (b), the court shall enter a written order of appointment stating:

(A) The findings of fact supporting the court's opinion that such an appointment is necessary in order to make a determination for the parenting and best interests of the child;

(B) The duties of the guardian ad litem, as enumerated in subdivision (c)(2) of this section;

(C) The scope of the guardian ad litem's access to the child and confidential information regarding the child, to the extent permissible by law;

(D) The duration of the guardian ad litem's appointment; and

(E) A provision for payment of the costs and fees associated with the guardian ad litem pursuant to subsection (f) of this section.

(2) The guardian ad litem shall have the authority to do the following, if included in the court's written order of appointment:

(A) Appear at all proceedings that affect the interests of the child;

(B) Conduct in-person interviews with the child, if the child's age is appropriate for the interview, and conduct in-person interviews with each parent, guardian, or other person having custody of the child, if authorized by the person's legal counsel;

(C) Visit the child and parents' home and any other home in which the child may reside;

(D) Interview any person providing medical, mental health, social, educational, or other services to the child; and

(E) If relevant to the best interests of the child, investigate facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem.

(3) Any written reports, findings or testimony of the guardian ad litem shall not be admissible in evidence in any proceeding involving the best interests of the child unless otherwise admissible pursuant to the Tennessee Rules of Evidence.

(d)

(1) If the court finds that it is in the child's best interest to appoint an attorney ad litem pursuant to subsection (b), the court shall enter a written order of appointment stating the findings of fact supporting the appointment being necessary to make a determination for the parenting and best interests of the child, a provision for payment of the costs and fees associated with the attorney ad litem pursuant to subsection (f) of this section, and the duration of such appointment.

(2) The child, not the appointing court, or any of the other parties, is the client of the attorney ad litem and the attorney ad litem shall conduct representation in accordance with the Tennessee Rules of Professional Conduct and other rules promulgated by the Tennessee supreme court. In any proceeding in which an attorney ad litem has been appointed, the attorney ad litem may not be a witness or testify regarding any matter relevant to the best interests of the child.

(e) Where a report of harm has been made pursuant to Title 37, the provisions of this section shall not apply.

(f) If a guardian ad litem or attorney ad litem is appointed by the court pursuant to subsection (b) of this section, the court at the time of the appointment shall set the hourly fees and costs that may be assessed by the guardian or attorney. The Tennessee supreme court may prescribe by rule a schedule of reasonable fees and costs that may be assessed, the nature of the expenses for which compensation is allowable and such other limitations and conditions for compensation as it deems appropriate. The fees and costs associated with the appointment of a guardian ad litem and attorney ad litem are to be assessed by the court as costs and not as child support. The reasonable fees and costs of the guardian ad litem and attorney ad litem shall be borne by the parties in the manner deemed by the court to be equitable, except that in the case of indigents, the state, through the administrative office of the courts, shall pay for the guardian ad litem and attorney ad litem for proceedings arising under this section.

(g)

(1) The court may not appoint a party to the proceedings, a party's employee, a party's representative or any person who has a conflict of interest with any party to the proceeding as the guardian ad litem or the attorney ad litem.

(2) At least five (5) days prior to the court's appointment of a guardian ad litem or attorney ad litem, the court shall notify all interested parties of the name of the proposed appointment. Any party who, at any time, perceives a conflict of interest between the guardian ad litem or attorney ad litem and any party to the proceeding or knows of any other reason why such person should not be appointed or continue to serve as guardian ad litem or attorney ad litem may file a motion with the court setting forth the nature of the conflict or other reason and a request that the guardian ad litem or attorney ad litem be disqualified from appointment or further service in the case. If the court finds that a conflict of

interest or other reason exists, the court shall relieve the guardian ad litem or attorney ad litem from further duties in the case and appoint a new guardian ad litem or attorney ad litem.

(3) For purposes of this subsection (g), "conflict of interest" means any matter in which the guardian ad litem or attorney ad litem has a direct or indirect interest that is in conflict or gives the appearance of conflict with the discharge of the guardian ad litem or attorney ad litem's duties pursuant to this section.

(h) There is a rebuttable presumption that any guardian ad litem or attorney ad litem appointed by the court pursuant to this section is acting in good faith and in so doing shall be immune from any liability that might otherwise be incurred while acting within the scope of such appointment. Such immunity shall apply in all proceedings in which a guardian ad litem or attorney ad litem are appointed pursuant to this section.

SECTION 2. For the purpose of the Tennessee supreme court and the administrative office of the courts establishing rules regarding compensation of guardians ad litem and attorneys ad litem and other rules relevant to the implementation of this act, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes it shall take effect on September 1, 2008, the public welfare requiring it, and shall apply to any guardian ad litem and attorney ad litem appointed after the effective date of this act.